

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 03-C-0074-C
)	
PETER THORSON, MANAGED)	
INVESTMENTS INCORPORATED, and)	
CONSTRUCTION MANAGEMENT, INC.,)	
)	
Defendants.)	

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers ("Corps"), in relevant part, filed the Complaint herein against Defendants Peter Thorson, Managed Investments, Inc., and Construction Management, Inc. (collectively, "Defendants"), alleging that Defendants violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants violated Section 301(a) of the CWA by discharging dredged or fill material and/or controlling or directing the discharge of dredged or fill material into waters of the United States at a site located in Tomah, Monroe County, Wisconsin (the "Site") and more fully described in the Complaint, without authorization by the United States Department of the Army ("the Corps");

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of the Corps, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, Defendants filed an Answer to the Complaint contesting the alleged violations and raising several affirmative defenses and filed Counterclaims against the United States;

WHEREAS, in its Opinion and Order dated April 6, 2004, the Court found defendants Peter Thorson and Managed Investments violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and determined that the case would proceed to trial on Construction Management's liability for violating Section 301(a) of the CWA, 33 U.S.C. § 1311(a);

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims against these Defendants under the CWA set forth in the Complaint regarding the Site;

WHEREAS, the United States and Defendants agree that settlement of the United States' claims against these Defendants is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against Defendants; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendants, and that this Consent Decree

adequately protects the public interest in accordance with the CWA and other applicable federal law.

THEREFORE, before the taking of any further testimony and without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Western District of Wisconsin pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendants conduct business in this District, the subject property is located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendants, their officers, directors, agents, employees and servants, and their successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with any of the Defendants whether or not such

person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with the Defendant, to take any actions necessary to comply with the provisions this Consent Decree.

5. The transfer of ownership or other interest in the Site shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in the Site, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its proposed successors in interest and shall simultaneously notify the Corps and the United States Department of Justice at the addresses specified in Section XI below that such notice has been given. As a condition to any such transfer, the Defendant making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against the Defendants under Section 301 of the CWA concerning the Site.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in Section 101 of the CWA, 33 U.S.C. § 1251. All plans, restoration work, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of

causing Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Defendants' obligations under this Consent Decree are joint and several.

9. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

10. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

11. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree, including by not limited to Gerke Excavating, Inc.

12. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

13. Defendants specifically acknowledge the Court's findings of liability for violations of Section 301 of the CWA, 33 U.S.C. § 1311(a), as set forth in its Opinion and Order dated April 6, 2004.

14. Defendants hereby dismiss any and all counterclaims that have been alleged, or could have been alleged, against the United States.

15. Defendants hereby expressly waive their right to appeal any of the Court's Opinions and Orders issued in this case, the dismissal of their counterclaims, the entry of any judgment, and the terms and conditions of this Consent Decree.

IV. CIVIL PENALTIES

16. Defendants have deposited \$105,000 into the Court's registry for payment of a civil penalty to the United States and the State of Wisconsin. Upon entry of this Consent Decree and its approval by the Court, the Clerk of Court shall transfer \$85,000 to the United States Department of Justice and shall pay \$20,000 to the Wisconsin Department of Justice.

17. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section X) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

V. EQUITABLE RELIEF - INJUNCTION AND RESTORATION

18. Except as in accordance with this Consent Decree, Defendants and Defendants' agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

19. Within 30 days of the entry date of this Consent Decree, Defendants shall submit a Proposed Restoration Work Plan, prepared by a qualified engineer or

environmental consultant, to the Court and to Plaintiff, as well as a schedule pursuant to which the tasks set forth in the Proposed Restoration Work Plan shall be completed. The Proposed Restoration Work Plan shall specify proposed earthwork quantities, methods of accomplishing the work, disposal site for material to be removed, finished grades, erosion control measures, planting and seeding strategies, monitoring protocols, cost estimates, maps or diagrams of the Site, and a schedule for each of accomplishing each of these activities. A mutual objective of the parties hereto is the full restoration of the Site.

20. Within 30 days after the submission of the Proposed Restoration Work Plan to the Court and to the United States, the parties will conduct informal discussions in an effort to resolve any objections, comments and proposed modifications by the United States relating to the Proposed Restoration Work Plan. At the end of this 30-day period, the parties will also file a Joint Status Report with the Court concerning any remaining issues. The Court will then approve and order the implementation of a Final Restoration Work Plan after taking into account the contents of the Joint Status Report. The approved Final Restoration Work Plan will then be incorporated herein by reference, and Defendants shall perform the approved Final Restoration Work Plan.

21. The Proposed Restoration Work Plan shall provide for the following:

A. Use of earthmoving machinery to remove the sand, concrete, fill and any other materials to the exposed native soils and the transport of these materials to an appropriate off-site disposal location;

B. Return of the topsoil (dredged spoil piles) into the areas previously filled or scraped at the Site;

C. Recontour the surface of the Site to its pre-violation elevations (and removal of excess topsoil, if any, to an appropriate off-site disposal location); and

D. Revegetate, at an appropriate time of the year, the restored area with a native wetland seed mix, all of which shall be facultative (FAC) or wetter (FACW or OBL), and shall also include a cover crop mix to control erosion. The native wetland seed mix and erosion control crop should be hand spread at the rate of 25 pounds per acre of Pure Live Seed, and the seed should be spread evenly and then harrowed or lightly raked into the ground surface. A sample of an approved native wetland seed mix and cover crop is contained in Exhibit A. Seeding should be conducted either between April 15 to July 20, or between September 20 and October 20.

22. The Proposed Restoration Work Plan shall also provide for three years of monitoring and control of invasive and/or non-native vegetation. Reed canary grass shall be controlled for the first full growing season following seeding to allow the native wetland seed mix and erosion control crop to establish. Glossy buckthorn, common buckthorn, non-native honeysuckles, purple loosestrife, and Canada thistle shall be controlled for the first three growing seasons following seeding. Invasive and/or non-native species shall be controlled either by hand removal or spot application of an herbicide. The Proposed Restoration Work Plan shall identify the proposed method and plan for controlling invasive and/or non-native species, including the type of herbicide and the proposed method of application (if applicable).

23. The Proposed Restoration Work Plan shall also include the following performance standards in order to measure the success of the wetland restoration:

A. Vegetation - At the end of the first full growing season following seeding, areal vegetation coverage in the restored area (as identified and roughly outlined in yellow on Exhibit B) shall be a minimum of 50% after the first growing season, 70% after the second growing season, and 80% after the third growing season. In addition, at the end of the first full growing season following seeding, no more than twenty percent (20%) of the restored area shall be colonized by reed canary grass, and no more than five percent (5%) of the restored area shall be colonized by glossy buckthorn, common buckthorn, non-native honeysuckles, purple loosestrife and/or Canada thistle. At the end of the third growing season following seeding, no more than five percent (5%) of the restored area shall be colonized by glossy buckthorn, common buckthorn, non-native honeysuckles, purple loosestrife and/or Canada thistle.

B. Hydrology - The hydrology of the Site (as identified and roughly outlined in yellow on Exhibit B) should be fully restored provided that the pre-violation land surface elevations are reconfirmed by a registered land surveyor, in accordance with the elevations identified in the Final Restoration Work Plan approved by the Court, using the benchmark elevations identified in Exhibit C. The registered land survey shall be conducted after the removal of the fill and recontouring of the native topsoil is complete. A copy of the survey shall be submitted to the United States no later than June 30, 2005, to the Addresses listed in Section XI below.

24. The schedule included within the Proposed Restoration Work Plan shall provide that the work described therein shall begin during this growing season, and shall be completed, except for monitoring and progress report activities, within one year after entry of this Consent Decree.

25. The Proposed Restoration Work Plan shall also provide that Defendants shall submit restoration plan progress reports annually for three years, including photographs of conditions in the areas to be restored at the Site. The annual restoration plan progress reports shall document whether the performance standards set forth in Paragraph 23 above are being achieved, and if not, what remedial measures will be undertaken to meet the standards, including the establishment of a prompt schedule to meet the performance standards.

26. Upon completion of the terms and conditions of the Final Restoration Work Plan, Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any portion of the Site, except as approved by the Corps.

27. To ensure that the Site remains undisturbed, Defendants shall, within fifteen (15) days of entry of this Consent Decree, record a certified copy of this Consent Decree with the Recorder of Deeds Office, in Monroe County, Wisconsin. Thereafter, each deed, title, or other instrument conveying an interest in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

28. Within 30 days after receipt by the Corps and the Department of Justice of the document recorded with the Monroe County Register of Deeds, the United States will file a document sufficient to remove the August 7, 2003 Notice of Lis Pendens, (recorded August 8, 2003), Monroe County Register of Deeds Doc. No. 527769, and will take all reasonable and necessary steps to cause the removal of the Notice of Lis Pendens.

VI. NOTICES AND OTHER SUBMISSIONS

29. Within 30 days after the deadline for completing any task set forth in Section V of this Consent Decree, Defendants shall provide the United States with written notice, at the addresses specified in Section XI of this Consent Decree, of whether or not that task has been completed.

30. If the required task has been completed, the notice shall specify the date it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

31. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendants shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VII. RETENTION OF RECORDS AND RIGHT OF ENTRY

32. Until one year after the Termination of this Consent Decree as specified in Section XVI below, Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in Section V of this Consent Decree, regardless of any corporate retention policy to the contrary. Until one year after the Termination of this Consent Decree, Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Section V.

33. At the conclusion of the document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendants shall deliver any such records or documents to Corps. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the

requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

34. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Defendants' premises to: monitor the activities required by this Consent Decree; verify any data or information submitted to the United States; obtain samples; inspect and evaluate Defendants' restoration and/or mitigation activities; and inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA. This provision is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring, and to obtain information from the Defendants as authorized by law.

VIII. DISPUTE RESOLUTION

35. Other than the submission, review, and approval of the Proposed Restoration Work Plan identified in Section V above, any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and Defendants affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and Defendants cannot

be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Defendants file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the terms, conditions, and objectives of this Consent Decree and the CWA, and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

36. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The Defendants shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendants shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the terms, conditions, and objectives of this Consent Decree, and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

37. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree, except as provided in Paragraph 44 below regarding payment of stipulated penalties.

IX. FORCE MAJEURE

38. Defendants shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state or local permits.

39. If Defendants believe that a Force Majeure event has affected Defendants' ability to perform any action required under this Consent Decree, Defendants shall notify the United States in writing within seven (7) calendar days after the commencement of the event at the addresses listed in Section XI. Such notice shall include a discussion of the following: what action has been affected; the specific cause(s) of the delay; the length or estimated duration of the delay; and any measures taken or planned by the Defendants to prevent or minimize the delay and a schedule for the implementation of such measures. Defendants may also provide to the United States any additional information that they deem appropriate to support their

conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

40. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with the Corps to determine when to begin or resume the operations that had been affected by any Force Majeure event.

41. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VIII of this Consent Decree.

42. Defendants shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendants and any entity controlled by Defendants, including their contractors and consultants; (2) that Defendants or any entity controlled by Defendants could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

X. STIPULATED PENALTIES

43. After entry of this Consent Decree, if Defendants fail to timely fulfill any requirement of the Consent Decree, including but not limited to the requirements of

Section V above and the deadlines set forth in the Final Restoration Work Plan, the Defendants shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- A. For Day 1 up to and including Day 30 of non-compliance, \$1,000.00 per day
- B. For Day 31 up to and including 60 of non-compliance, \$2,000.00 per day
- C. For Day 61 and beyond of non-compliance, \$3,000.00 per day

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

44. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VIII and/or the Force Majeure provisions in Section IX shall be resolved upon motion to this Court as provided in Paragraphs 35 and 36.

45. The filing of a motion requesting that the Court resolve a dispute shall stay Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by Defendants as provided in this Section.

46. To the extent Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 38 above), or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

47. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

48. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing Case Number 03-C-0074-C. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice, at the addresses specified in Section XI of this Decree.

XI. ADDRESSES

49. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO THE CORPS:

Steven P. Adamski
Deputy District Counsel
U.S. Army Corps of Engineers
190 East Fifth Street
St. Paul, Minnesota 55101

Bruce Norton, Biologist
Lead Project Manager
U.S. Army Corps of Engineers
1114 South Oak Street
La Crescent, MN 55947

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE:

Leslie K. Herje
Assistant U.S. Attorney
Chief, Civil Division
P.O. Box 1585
Madison, Wisconsin 53701-1585

C. TO DEFENDANTS:

Peter Thorson
2307 Superior Avenue
Tomah, Wisconsin 54660

Alexander M. Bullock
Baise & Miller, P.C.
1020 19th Street, NW, Suite 400
Washington, DC 20036

XII. COSTS OF SUIT

50. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendants subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendants for noncompliance with or enforcement of this Consent Decree.

XIII. PUBLIC COMMENT

51. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

XIV. CONTINUING JURISDICTION OF THE COURT

52. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XV. MODIFICATION

53. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Defendants and approved by the Court.

XVI. TERMINATION

54. Except for Paragraph 18 above, this Consent Decree may be terminated by either of the following:

A. Defendants and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. Defendants may make a unilateral motion to the Court to terminate this Decree after all of the following have occurred:

1. Defendants have obtained and maintained compliance with all provisions of this Consent Decree and the CWA for twelve (12) consecutive months;

2. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. Defendant's have certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

4. within forty-five (45) days of receiving such certification from the Defendants, the United States has not contested in writing that such compliance has been achieved. If the United States disputes Defendants' full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

XVII. AUTHORITY TO ENTER CONSENT DECREE

55. Each of the undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Consent Decree on behalf of such Parties, and to execute and to bind such Parties to this Consent Decree.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2004.

BARBARA B. CRABB
United States District Judge


ON BEHALF OF THE UNITED STATES:

J.B. VAN HOLLEN
United States Attorney
Western District of Wisconsin

By:

7/27/04

Date

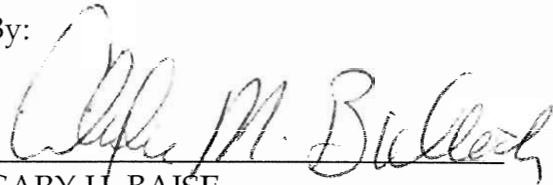


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(608) 264-5724

FOR DEFENDANTS PETER THORSON,
MANAGED INVESTMENTS, INC. and
CONSTRUCTION MANAGEMENT, INC.

BAISE & MILLER

By:

A handwritten signature in dark ink, appearing to read "Alex M. Bullock", written over a horizontal line.

GARY H. BAISE

ALEXANDER M. BULLOCK

Baise & Miller, P.C.

1020 19th Street, NW, Suite 400


Washington, DC 20036

(202) 331-9100

Fax (202) 331-9060

7/31/04
Date

7-21-2004
Date



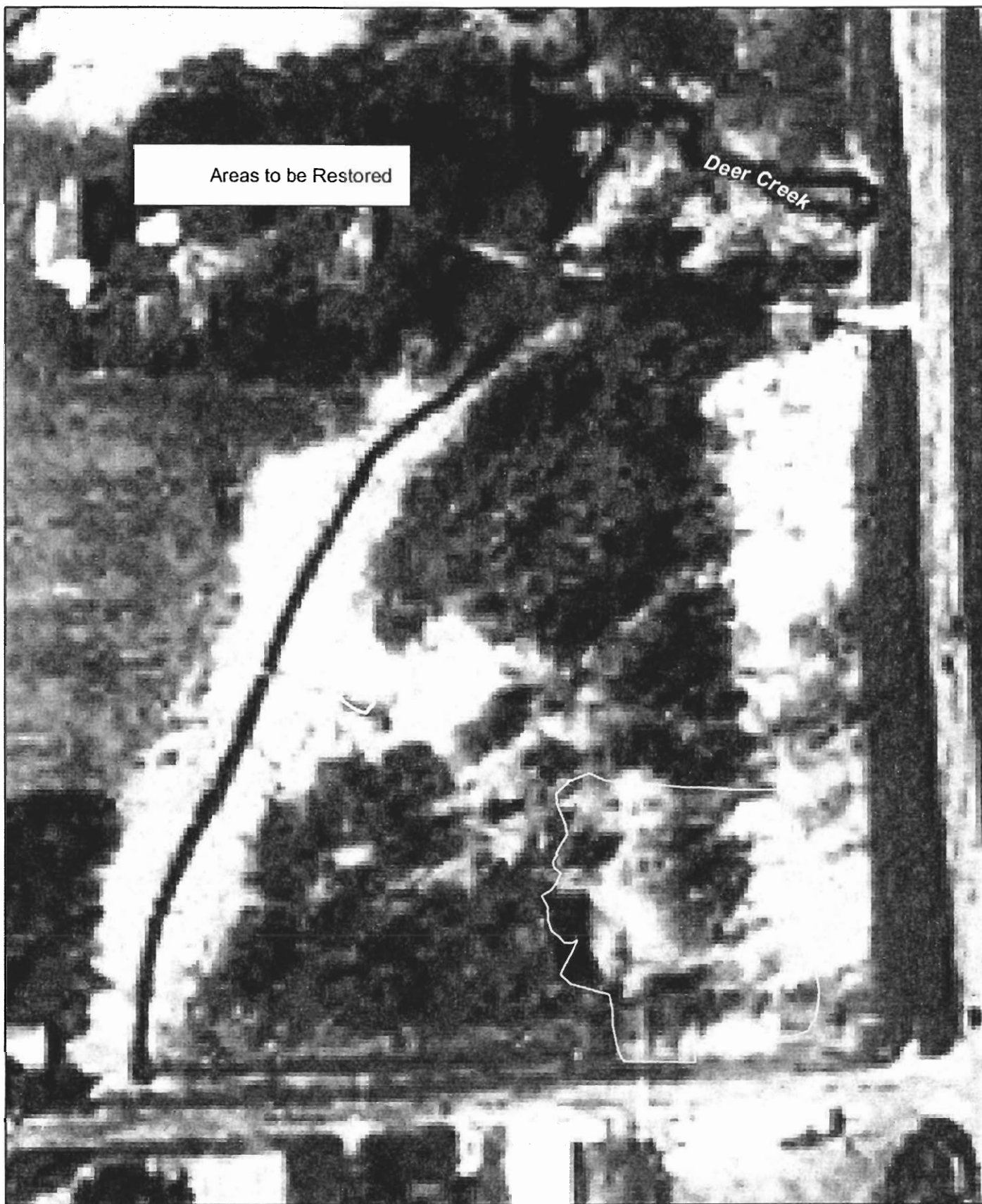
PETER THORSON, Individually and as
President, Managed Investments, Inc., and
President, Construction Management, Inc.

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Exhibit A

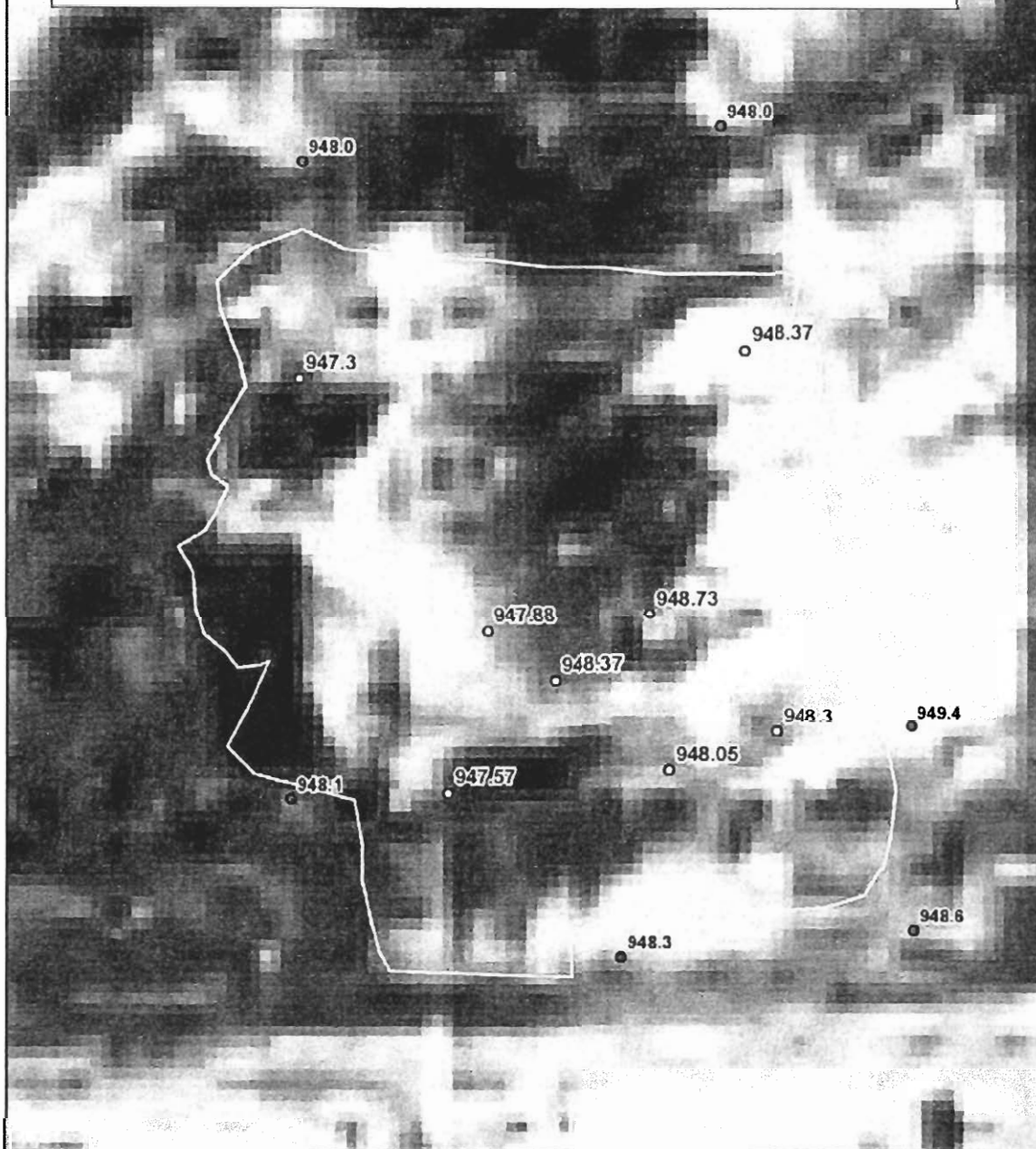
Common Name	Scientific Name	Percent of Mix
Virginia wild rye	<i>Elymus virginicus</i>	35.0
Fowl bluegrass	<i>Poa palustris</i>	35.0
Annual rye grass	<i>Lolium italicum</i>	22.0
Prairie cordgrass	<i>Spartina pectinata</i>	4.0
Green bulrush	<i>Scirpus atrovirens</i>	0.5
Woolgrass	<i>Scirpus cyperinus</i>	0.5
Cup-plant	<i>Silphium perfoliatum</i>	1.0
New England aster	<i>Aster novae-angliae</i>	0.5
Sawtooth sunflower	<i>Helianthus grosseserratus</i>	1.0
Joe-pye weed	<i>Eupatorium maculatum</i>	0.5
Total:		100.0
Rate: 25.0 pounds/acre Pure Live Seed (PLS)		



Thorson Restoration Areas



- Existing Ground Elevations (From Fig. 7, Thorson Site Investigation)
 - Calculated Wetland Surface Elevations (prior to unauthorized activities)
- Restoration Limits (southeast Restoration Area)



 *St. Paul District*
REGULATORY
US Army Corps
of Engineers®

0 50 100
Feet

Restoration Elevations

